IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3870 of 2007()

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CRIME NO.105/2002 OF NADAKAVU POLICE STATION

: PETITIONER - ACCUSED

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MAKHBOOL @ PAPPI, S/O.ALIKOYA,
FATHIMA MANZIL, PUTHIYANGADI.P.O.
VELIYAKATH, CALICUT.

BY ADV. SRI.K.K.JAYARAJ NAMBIAR

RESPONDENTS: COMPLAINANT

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STATE OF KERALA
(REP. BY THE SUB INSPECTOR OF POLICE, NADAKKAVU POLICE STATION - CR.105/2002 OF NADAKKAVU POLICE STATION) REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.3870 of 2007**

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Dated this the 27th day of June, 2007

**ORDER**

Application for regular bail. All offences alleged are bailable offences. Cognizance was taken by the learned Magistrate. Consequent to non appearance of the petitioner, the case against him has been transferred to the list of Long Pending Cases. The petitioner finds coercive processes issued by the learned Magistrate chasing him. The petitioner is preparing to surrender before the learned Magistrate and seek regular bail, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. Therefore he prays that directions may be issued under Section 438 and/or 482 Cr.P.C in his favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. Hand over a copy of this order to the learned counsel for the petitioners.

**(R.BASANT, JUDGE)**

rtr/-